

1-3-2014

Olsen v. State Clerk's Record v. 1 Dckt. 41499

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LAW CLERK

STATE OF IDAHO

S.C. #41499

STATE OF IDAHO

Plaintiff / Respondent

vs.

JAMES OLSEN

Defendant / Appellant

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the Fourth Judicial District
of the State of Idaho, in and for the County of Elmore.*

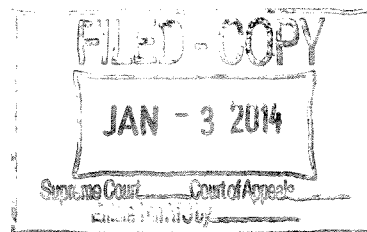
Lawrence G. Wasden,

Attorney General

Attorney for Respondent

James Olsen,

Pro-Se



411499

IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 41499
Plaintiff-Respondent,)	
)	
v.)	
)	
JAMES OLSEN,)	
)	
Defendant-Appellant.)	
<hr/>)	

Appeal from the Fourth Judicial District, Elmore County, Idaho

HONORABLE LYNN G. NORTON, presiding,

James Olsen, Pro Se, P.O. Box 14, Boise, Idaho 83707

Honorable Lawrence G. Wasden, Attorney General, PO Box 83720, Boise, Idaho 83720-0010

COPY

IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JAMES OLSEN,

Defendant-Appellant.

Appeal from the Fourth Judicial District, Elmore
County, Idaho

HONORABLE LYNN G. NORTON, presiding,

James Olsen, Pro Se, P.O. Box 14, Boise, Idaho
83707

Honorable Lawrence G. Wasden, Attorney General,
PO Box 83720, Boise, Idaho 83720-0010

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Case: CV-2013-0000667 Current Judge: Lynn G Norton
James Dee Olsen, Plaintiff vs State Of Idaho, Defendant

James Dee Olsen, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
7/22/2013	NCPC	HEATHER	New Case Filed - Post Conviction Relief	Lynn G Norton
	APER	HEATHER	Defendant: State of Idaho Appearance Elmore County Prosecuting Atty	Lynn G Norton
	PETN	HEATHER	Petition and Affidavit for Post Conviction Relief	Lynn G Norton
	AFFD	HEATHER	Affidavit of Facts in Support of Post-Conviction Petition	Lynn G Norton
	MOTN	HEATHER	Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Lynn G Norton
8/16/2013	ORDR	HEATHER	Order Denying Payment of Costs at County Expense	Lynn G Norton
	NOTC	HEATHER	Notice of Intent to Dismiss	Lynn G Norton
9/3/2013	MISC	HEATHER	Response	Lynn G Norton
9/9/2013	ORDR	HEATHER	Order of Summary Dismissal	Lynn G Norton
	JDMT	HEATHER	Judgment	Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: closed	Lynn G Norton
10/7/2013	NTOA	HEATHER	Notice Of Appeal	Lynn G Norton
	APSC	HEATHER	Appealed To The Supreme Court	Lynn G Norton
	APDC	HEATHER	Appeal Filed In District Court	Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: Reopened	Lynn G Norton
	MOTN	HEATHER	Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Lynn G Norton
10/22/2013	ORDR	HEATHER	Order Re: Partial Payment of Court Fees (Prisoner)	Lynn G Norton

MEMORANDA

	DATE			
	Month	Day	Year	
1	7	22	13	Motion - Affidavit for Post Conviction Relief
2	7	22	13	Att. of facts in Support of Post-Conviction Petition
3	7	22	13	Motion - Affidavit for Permission to Proceed on Partial
4	8	16	13	Order Denying Payment of Costs
5	8	16	13	Notice of Intent to Dismiss
6	9	3	13	Response
7	9	9	13	Order of Summary Dismissal
8	9	9	13	Judgment
9	10	7	13	Notice of Appeal
10	10	7	13	Motion & Affidavit for Permission to Proceed on Partial
11	10	22	13	Order Re: Partial Payment of Court Fees (Fees)
12				
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42				

FILED

2013 JUL 22 AM 11:03

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Inmate Name James D. Olsen
IDOC No. 17304
Address ISCI P.O. Box
Boise, Id 83707

Petitioner

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

James D. Olsen)
)
Petitioner,)
)
vs.)
)
State of Idaho)
)
Respondent.)
)

Case No. CV-2013-667

PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF

The Petitioner alleges:

1. Place of detention if in custody: ISCI, Boise Id
2. Name and location of the Court which imposed judgement/sentence: Fourth
Judicial District, Elmore County, Id
Hon. Lynn G. Norton, presiding
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: CR 2012-1748
 - (b) Offense Convicted: IC 18-8004(G)(a); IC 19-2514
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: July 16, 2012
 - b. Terms of Sentence: Fixed 5, Indeterminate 10 (Total 15)

PETITION FOR POST CONVICTION RELIEF - 1
Revised: 10/13/05

7-22-13 = Copies provided to counsel. #3
003

3.

5. Check whether a finding of guilty was made after a plea:

☒ Of guilty

☐ Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

☐ Yes ☒ No

If so, what was the Docket Number of the Appeal? _____

7. State concisely all the grounds on which you base your application for post

conviction relief: (Use additional sheets if necessary.)

(a) Amendment IV, U.S. Constitution Double Jeopardy
Clause - Please see next page

(b) _____

(c) _____

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? no

b. Any other petitions, motions, or applications in any other court? no

c. If you answered yes to a or b above, state the name and court in which each
petition, motion or application was filed:

I.C. 18-8004 provides for enhanced punishment if there exist prior offenses
I.C. 19-2514 provides for enhanced punishment if there exist prior offenses.

The Respondent used prior DUI's CR-2001-3189, and CR2004-1983 to increase the penalty under IC18-8004, and then again used CR2001-3189 and CR2004-1983 to further increase the penalty under I.C. 19-2514.

Petitioner alleges under the specific facts of this case that increasing the penalty twice for his current crime in this manner exacts cumulative punishment in violation of the U.S. Constitution and/or other applicable State provisions

Petition for Post Conviction - Page 2 continued (7)

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) _____

(b) _____

(c) _____

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

☒ Yes [] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

[] Yes ☒ No

12. State specifically the relief you seek:

That the increased sentence I received
pursuant to IC 19-2514 be voided so that my
sentence is amended to read 5yrs fixed followed
by 5yrs indeterminate for a total not to exceed 10 yrs.

13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 18 day of July, 2013

[Signature]
Petitioner

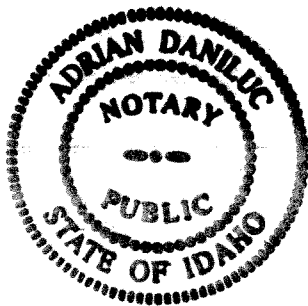
STATE OF IDAHO)
) ss
County of Ada)

James Dee Olson, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

[Signature]
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 18th day of July, 2013.

(SEAL)



[Signature]
Notary Public for Idaho
Commission expires: 7-16-2019

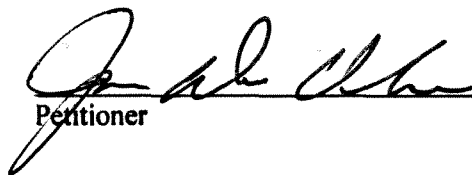
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18 day of July, 20 , I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

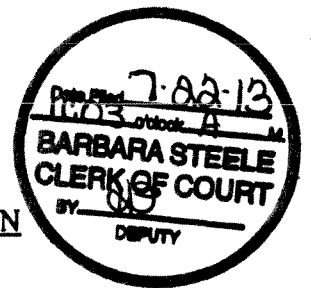
Elmore County Prosecuting Attorney

190 South 4th East

Mountain Home, Id 83647


Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION



STATE OF IDAHO)

COUNTY OF Ada) ss


James Olsen, being first duly sworn on oath, deposes and says:

- ① I am the Petitioner herein and I bring this action in good faith.
- ② That the penalty exposure for my current DUI was increased twice: once under IC 18-80046 (increased punishment in cases with prior convictions), and then again under IC 19-2514 (increased punishment because of prior convictions)
- ③ That the relevant prior convictions used were CR 2001-3189, Bonanza County and CR 2004-1983, Twin Falls County.
- ④ That I allege under the particular facts of this case, enhancement under 18-8004, and then a cumulative enhancement under 19-2514 violates the Double Jeopardy Clause of the U.S. Constitution and other comparable State laws.
- ⑤ That I asked appointed counsel about both the forced blood draw in my case (e.g. Missouri v. McDerby, U.S. S. Ct 2013, 569 U.S. —), and my double jeopardy questions. In both instances counsel stated unequivocally that I had no colorable defenses or objections
- ⑥ Based on counsel's statements I did not

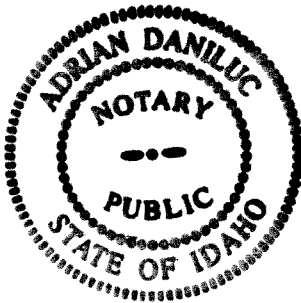
7-22-13: Copies provided to counsel. JJ


raise any double jeopardy questions or claim prior
to my plea and therefore did not knowingly or intelligently
waive any claims I might have had.

Further your affiant sayeth not.


Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 18 day of
July, 2018




Notary Public for Idaho
My Commission Expires: 7-16-2019

FILED

2013 JUL 22 AM 11:03

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

James Dee Olsen

Full Name of Party Filing This Document

ISCI, 13C 60, P.O. Box 14

Mailing Address (Street or Post Office Box)

Baise, ID 83707

City, State and Zip Code

Telephone Number

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Elmore

James D. Olsen

Plaintiff, Petitioner

vs.

State of Idaho

Defendant, Respondent

Case No.: CN-0013-667

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
County of Ada) ss.

☒ Plaintiff ☐ Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Post Conviction Relitigation.
believe I'm entitled to get what I am asking for.

MOTION AND AFFIDAVIT FOR PERMISSION TO
PROCEED ON PARTIAL PAYMENT OF COURT FEES
(PRISONER)
CAO 1-10C 2/25/2005

PAGE 1

7.22-13: Copies provided to counsel. JJ
011

2. ☒ I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. ☐ I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: James Olsen Other name(s) I have used: _____

Address: ISEI Base Id

How long at that address? 10 mo. Phone: —

Date and place of birth: Inok Falls Id

DEPENDENTS:

I am ☒ single ☐ married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: _____

INCOME:

Amount of my income: \$ 0 per [] week [] month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>NONE</u>					

List all other property owned by you and state its value.

Description (provide description for each item)

Value

Cash

APPX \$ 200.00

Notes and Receivables

Vehicles:

Bank/Credit Union/Savings/Checking Accounts

Stocks/Bonds/Investments/Certificates of Deposit

Trust Funds

Retirement Accounts/IRAs/401(k)s

Cash Value Insurance

Motorcycles/Boats/RVs/Snowmobiles:

Furniture/Appliances

Jewelry/Antiques/Collectibles

Description (provide description for each item)

Value

TVs/Stereos/Computers/Electronics

Tools/Equipment

Sporting Goods/Guns

Horses/Livestock/Tack

Other (describe)

EXPENSES: List all of your monthly expenses.

Expense

**Average
Monthly Payment**

Rent/House Payment

Vehicle Payment(s)

Credit Cards: (list each account number)

Capital One
Bank of America

appx \$1000 - Total
1500 -

Loans: (name of lender and reason for loan)

Electricity/Natural Gas

Water/Sewer/Trash

Phone

Groceries

Clothing

Auto Fuel

Auto Maintenance

Cosmetics/Haircuts/Salons

Entertainment/Books/Magazines

Home Insurance

Expense

**Average
Monthly Payment**

Auto Insurance

Life Insurance

Medical Insurance

Medical Expense

Other

MISC \$3000

MISCELLANEOUS:

How much can you borrow? \$ 0 From whom? —

When did you file your last income tax return? 2011 Amount of refund: \$ NONE

PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name

Address

Phone

Years Known

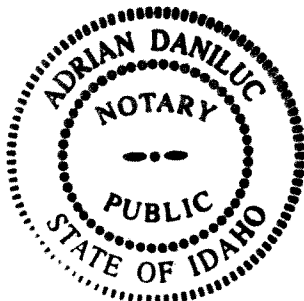
Beverly Olsen 780 Elm Idaho Falls 525-4288 65 yrs

Signature

James D. Olsen
Typed or Printed Name

2013

SUBSCRIBED AND SWORN TO before me this 18th day of July



Notary Public for Idaho

Residing at

My Commission expires 7-16-2019

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 06/05/2013 =

Doc No: 17304 Name: OLSEN, JAMES DEE
Account: CHK Status: ACTIVE

ISCI/UNT13 PRES FACIL
TIER-C CELL-60

Transaction Dates: 05/01/2012-06/05/2013

Beginning Balance 0.00	Total Charges 832.85	Total Payments 1157.53	Current Balance 324.68
------------------------------	----------------------------	------------------------------	------------------------------

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
11/01/2012	HQ0604983-001	950-REICNARCERATED	IBSUSPCHK	0.00	0.00
11/01/2012	HQ0604986-004	013-RCPT RDU	ELMORE	149.55	149.55
11/05/2012	II0605421-175	099-COMM SPL		52.47DB	97.08
11/05/2012	II0605421-176	099-COMM SPL		4.82DB	92.26
11/07/2012	II0606019-003	071-MED CO-PAY	549023	8.00DB	84.26
11/12/2012	II0606372-191	099-COMM SPL		3.15DB	81.11
11/13/2012	II0606534-007	100-CR INM CMM		3.15	84.26
11/14/2012	HQ0606564-005	011-RCPT MO/CC	MAIL	400.00	484.26
11/18/2012	II0607059-180	099-COMM SPL		4.16DB	480.10
11/26/2012	II0607658-152	099-COMM SPL		324.16DB	155.94
11/26/2012	II0607658-153	099-COMM SPL		19.56DB	136.38
12/03/2012	II0608455-206	099-COMM SPL		15.72DB	120.66
12/03/2012	II0608455-207	099-COMM SPL		4.87DB	115.79
12/10/2012	II0609437-178	099-COMM SPL		21.74DB	94.05
12/17/2012	II0610283-179	099-COMM SPL		3.71DB	90.34
12/23/2012	II0611017-202	099-COMM SPL		11.66DB	78.68
12/23/2012	II0611017-203	099-COMM SPL		18.23DB	60.45
12/30/2012	II0611657-196	099-COMM SPL		7.31DB	53.14
01/07/2013	II0612443-216	099-COMM SPL		11.65DB	41.49
01/08/2013	HQ0612593-006	011-RCPT MO/CC	MAIL	400.00	441.49
01/14/2013	II0613715-200	099-COMM SPL	613362	21.04DB	420.45
01/21/2013	II0614020-170	099-COMM SPL		7.90DB	412.55
01/22/2013	II0614243-012	100-CR INM CMM		3.98	416.53
01/28/2013	II0614795-180	099-COMM SPL		8.32DB	408.21
01/28/2013	II0614795-181	099-COMM SPL		3.98DB	404.23
02/04/2013	II0615468-195	099-COMM SPL		11.82DB	392.41
02/11/2013	II0616507-228	099-COMM SPL		16.49DB	375.92
02/12/2013	II0616738-009	071-MED CO-PAY	558863	8.00DB	367.92
02/18/2013	II0617194-207	099-COMM SPL		7.00DB	360.92
02/25/2013	II0617914-190	099-COMM SPL		17.76DB	343.16
02/25/2013	II0617914-191	099-COMM SPL		11.32DB	331.84
03/04/2013	HQ0618667-025	030- 3/2013 CI INC	CI INCOME	34.99	366.83
03/07/2013	II0619292-008	071-MED CO-PAY	559131	8.00DB	358.83
03/11/2013	II0619605-230	099-COMM SPL		15.53DB	343.30
03/18/2013	II0620328-214	099-COMM SPL		5.41DB	337.89
03/18/2013	II0620328-215	099-COMM SPL		35.83DB	302.06
04/01/2013	II0621853-215	099-COMM SPL		19.10DB	282.96
04/02/2013	HQ0622017-025	030- 4/2013 CI INC	CI INCOME	53.49	336.45
04/12/2013	II0623398-108	099-COMM SPL		16.70DB	319.75

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 06/05/2013 =

Doc No: 17304 Name: OLSEN, JAMES DEE
Account: CHK Status: ACTIVE

ISCI/UNT13 PRES FACIL
TIER-C CELL-60

Transaction Dates: 05/01/2012-06/05/2013

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	832.85	1157.53	324.68

===== TRANSACTIONS =====

Date	Batch	Description	Ref Doc	Amount	Balance
04/15/2013	II0623484-217	099-COMM SPL		26.21DB	293.54
04/22/2013	II0624217-227	099-COMM SPL		8.53DB	285.01
05/02/2013	HQ0625416-028	030- 5/2013 CI INC CI INCOME		55.91	340.92
05/06/2013	II0625880-221	099-COMM SPL		15.74DB	325.18
05/10/2013	II0626692-013	071-MED CO-PAY	576764	8.00DB	317.18
05/13/2013	II0626755-219	099-COMM SPL		18.31DB	298.87
05/20/2013	II0627494-235	099-COMM SPL		12.19DB	286.68
06/03/2013	II0628763-197	099-COMM SPL		18.46DB	268.22
06/04/2013	HQ0628945-026	030- 6/2013 CI INC CI INCOME		56.46	324.68

STATE OF IDAHO

Idaho Department of Correction

I hereby certify that the foregoing is a full, true and
correct copy of an instrument as the same now remains
on file and of record in my office.

WITNESS my hand hereto affixed this 5TH

day of June A.D., 2013

by S. Andrews

FILED

2013 AUG 16 PM 2:00

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *JS*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

JAMES D. OLSEN,

Petitioner,

vs.

STATE OF IDAHO,

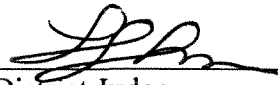
Respondent.

Case No. CV-2013-667

ORDER DENYING PAYMENT OF COSTS
AT COUNTY EXPENSE

The Petitioner filed a Petition for Post Conviction Relief on July 22, 2013. In paragraph 11, the Petitioner noted that he was not requesting appointed counsel to represent him. In paragraph 10, he answered that he was seeking leave to proceed in forma pauperis (that the proceeding be at county expense). The court has considered every inference in the allegations in the Petition that was filed and still finds the Petition to be frivolous. Therefore, the Petitioner's request for payment of costs of this proceeding at County expense is DENIED.

SO ORDERED and dated this 15th day of August, 2013.



District Judge
Lynn Norton

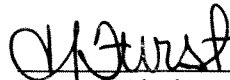
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2013, I served a copy of the Notice of Intent to Dismiss and a copy of the Order Denying Payment of Costs at County Expense upon the following parties:

Kristina M. Schindele
Elmore County Prosecuting Attorney
Interdepartmental Mail

James Dee Olsen
Idaho State Correctional Institution 13C60
P.O. Box 14
Boise, Idaho 83707

BARBARA STEELE
Clerk


Deputy Clerk

ORDER DENYING PAYMENT OF COSTS AT COUNTY EXPENSE

FILED

2013 AUG 16 PM 2:00

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *[Signature]*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

JAMES D. OLSEN,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2013-667

NOTICE OF INTENT TO DISMISS

Currently before this Court is Petitioner's application for post-conviction relief filed July 22, 2013. The Petitioner claims a violation of the Fifth Amendment of the United States Constitution because the state used prior convictions to enhance his sentence in violation of the double jeopardy clause. Specifically, he states he was convicted under Idaho Code § 18-8004(6) and the punishment for this DUI was enhanced because he had previous convictions for driving under the influence, and then his sentence was enhanced again under Idaho Code § 19-2514 for being a persistent violator of the law, using the same convictions. He requests the indeterminate portion of his sentence be reduced from five years fixed and ten years indeterminate for a total unified sentence of fifteen years down to five years fixed and five years indeterminate for a total unified sentence of ten years.

BACKGROUND

The Petitioner pled guilty Count II, Driving Under the Influence, a Felony pursuant to Idaho Code § 18-8004 as enhanced by Part II of the Amended Information, and Part III of the Amended Information being a Persistent Violator under Idaho Code § 19-2514, on May 25, 2012. Counts I and III were dismissed. The Petitioner was sentenced on July 6, 2012 for Count

II as enhanced by Part II and III to five years determinate and ten years indeterminate for a total unified sentence of fifteen years.

The Court has taken judicial notice of the Amended Information filed on May 25, 2012 in the underlying criminal case. The Part II of the Information alleges the same prior convictions as Part III of the Information: Bonneville County CR-2001-3189-FE on March 7, 2002 and Twin Falls County CR-2004-1983 on October 29, 2007, both driving under the influence convictions.

The Petitioner did not file an Idaho Criminal Rule 35 motion for reduction of sentence or an appeal with the Idaho Supreme Court.

The Petitioner, *pro se*, filed a sworn Petition and Affidavit for Post-Conviction Relief on July 22, 2013 which was timely pursuant to Idaho Code § 19-4902.

LEGAL STANDARDS

The Uniform Post-Conviction Procedure Act, I.C. §§19-4901 through 19-4911, allows for individuals convicted and/or sentenced of a crime to petition the Court for relief. The statute allows relief in the following situations: the sentence is in violation of the constitution; the Court lacks jurisdiction; the sentence exceeds the maximum provided by law; there is evidence, not previously presented, requiring vacation of the sentence in the interest of justice; that the sentence has expired; the petitioner is innocent; and the sentence is subject to collateral attack. After the reviewing an application for post-conviction relief, the Court can, if satisfied that the applicant is not entitled to relief, and that no purpose would be served by any further proceedings, indicate to the parties its intention to dismiss the application, and its reasons for doing so. I.C. §19-4906(b). The applicant shall have an opportunity to respond to the Court's notice of intent to dismiss within twenty (20) days of the proposed dismissal. Summary disposition under I.C. §19-4906 is the "procedural equivalent of a summary judgment motion under I.R.C.P. 56." *Pratt v. State*, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000); *see also*, *Martinez v. State*, 125 Idaho 844, 846, 875 P.2d 941, 943 (Ct.App. 1994). In "determining whether a motion for summary disposition is properly granted, the Court reviews the facts in a light most favorable to the petitioner and determines whether the facts would entitle petitioner to relief if accepted as true." *Pratt*, 134 Idaho at 583, 6 P.3d at 833.

"[A]n applicant's conclusory allegations, unsubstantiated by any admissible evidence, need not be accepted as true." *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App.

1994). If the allegations fail to frame a genuine issue of material fact, or fail to establish all the necessary *prima facie* elements of a claim for relief, the court “may indicate to the parties its intention to dismiss the application and the reasons for so doing.” I.C. § 19-4906(b); I.C.R. 57(c); *Roman, supra*; *Parrott v. State*, 117 Idaho 272, 276, 274, 787 P.2d 258, 260, 262 (1990). However, if the application raises a material issue of fact, the district court must conduct an evidentiary hearing and make specific findings. I.C. § 19-4907(a); *Martinez*, 125 Idaho at 846, 875 P.2d at 943.

Idaho Code § 18-8004(1)(a) is the statute that prohibits driving under the influence of alcohol and/or drugs in Idaho. Idaho Code § 18-8005 sets out the penalties for this offense. Idaho Code § 18-8005(9) provides:

... any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, ... 18-8004C, ... 18-8006, ... 18-8004 3.(b), Idaho Code, ... and within fifteen (15) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (6) of this section.

Idaho Code § 18-8006 provides the maximum sentence for Count II as enhanced in Part II of the Amended Information for at least one prior felony Idaho Code § 18-8004 within the past fifteen years was ten years indeterminate, up to a \$5,000.00 fine, and up to five years of absolute driver’s license suspension. For this offense, there was a minimum of thirty days in jail and a minimum of one year absolute driver’s license suspension.

The Defendant also pled guilty to being a Persistent Violator under Idaho Code § 19-2514 as alleged in Part III of the Amended Information. Pursuant to Idaho Code § 19-2514, “...on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.” Therefore, there was a minimum unified sentence of five years required. *State v. Toyne*, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

DISCUSSION

Petitioner claims in his *pro se* that using the same two prior convictions to enhance his charge and sentence to a felony under Idaho Code § 18-8004(6), and then using those two prior felonies plus this conviction to enhance his sentence again under Idaho Code § 19-2514 for being a persistent violator of the law was a violation of the Double Jeopardy Clause.

The Fifth Amendment's Double Jeopardy Clause applies to the states through the Fourteenth Amendment. *Illinois v. Vitale*, 447 U.S. 410, 100 S.Ct. 2260, 65

L.Ed.2d 228 (1980); *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). The guarantee against double jeopardy encompasses three distinct constitutional protections. "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishment for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969); *Brown v. Ohio*, 432 U.S. 161, 165, 97 S.Ct. 2221, 2225, 53 L.Ed.2d 187 (1977). Fourteenth Amendment. *Illinois v. Vitale*, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980); *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

State v. Galaviz, 104 Idaho 328, 329, 658 P.2d 999, 1000 (Ct. App. 1983).

The Idaho Court of Appeals made clear in *State v. Lopez* that an enhancement is not an offense and does not create a new crime. *State v. Lopez*, 107 Idaho 826, 693 P.2d 472 (Ct. App. 1984). An enhancement, instead, provides for the imposition of greater punishment for the underlying conviction and a separate sentence is not to be imposed for the enhancement. *Id.* Where a person is convicted of a felony and is also adjudged to be a persistent violator of the law, there is only one conviction and only one sentence can be imposed. *State v. Martinez*, 107 Idaho 928, 693 P.2d 1130 (Ct. App. 1985), *cert denied*, 116 Idaho 466, 776 P.2d 828 (1985). However, as a persistent violator, the sentence can be greater than what the statutes otherwise would have permitted for the particular felony and may include imprisonment for life. *Id.*

The Petitioner seems to assert that because his prior sentences were for driving under the influence that the enhancement statutes result in multiple punishment for the same offense. However, each of these offenses were felonies and each of these offenses were committed on different days and in different counties. His first felony was in 2002 in Bonneville County, the second in 2007 in Twin Falls County, and the third was in 2012 in Elmore County. While each crime was the same charge, the criminal offenses here are very distinct with each separated by five years. Persistent violator status is not a separate crime, it is simply a determination that broadens the judge's sentencing options. *State v. Smith*, 116 Idaho 553, 777 P.2d 1226 (Ct. App. 1989). The Idaho Court of Appeals considered what was a single count in aggravated driving under the influence case in *State v. Turney*, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009). The Court determined that the driving was not the single act, but the act was injuring separate victims even in the single act of driving under the influence. The Court of Appeals upheld separate charges for each victim and then upheld the persistent violator enhancement to the sentence for each separate victim. Clearly, if the charging and sentencing the *Turney* case for separate acts from a

single act of driving did not violate the Double Jeopardy clause, then sentencing as a peristent violator for three separate felonies committed on three separate days five years apart was also not a violation of the Double Jeopardy clause.

This court is not bound by the Petitioner's legal conclusions in his petition or affidavit as to the legal effect of an enhancement. I.C. § 18-8004(9) clearly made the 2012 offense a felony, his third felony conviction. The Idaho legislature intended that driving under the influence, when committed repeatedly or under aggravated circumstances, should receive greater penalties than a first-time charge and this does not violate double jeopardy. Then, I.C. § 19-2514 specifically required the minimum sentence of five years imprisonment and allows an extended sentence for up to life for this third felony offense. Again, the Idaho legislature clearly intended that felonies when committed repeatedly should receive greater penalties than those available for the first two and this does not violate double jeopardy. It is well established in our case law that enhancement is part of a single sentence and this does not violate double jeopardy.

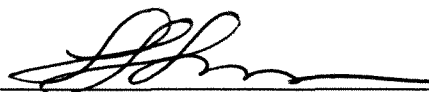
Therefore, taking as true each allegation in the Petition and affidavit, the Petition has no legal merit and is frivolous.

NOTICE OF INTENT TO DISMISS

On the basis of the application, and the present record before it, the Court is satisfied that Petitioner is not entitled to post-conviction relief as a successive case, and that no purpose would be served by any further proceedings. Petitioner is hereby granted twenty (20) days to reply to the proposed dismissal of this action. In light of the reply, or on default thereof, the Court may order the application dismissed or grant leave to file an amended application, or direct that the proceedings otherwise continue.

IS IT SO ORDERED.

Dated this 15th day of August, 2013.



Lynn Norton
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2013, I served a copy of the Notice of Intent to Dismiss and a copy of the Order Denying Payment of Costs at County Expense upon the following parties:

Kristina M. Schindele
Elmore County Prosecuting Attorney
Interdepartmental Mail

James Dee Olsen
Idaho State Correctional Institution 13C60
P.O. Box 14
Boise, Idaho 83707

BARBARA STEELE
Clerk

August
Deputy Clerk

ORDER DENYING PAYMENT OF COSTS AT COUNTY EXPENSE

James Olsen #17304
ISCI, ISC 60A
P.O. Box 14
Boise, Id 83707

6
FILED

2013 SEP -3 PM 12:22

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

IN THE DISTRICT COURT OF THE
FOURTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE
COUNTY OF ELMORE

JAMES DEE OLSEN,
Petitioner,

v.

STATE OF IDAHO,
Respondent.

Case No CV-2013-667

RESPONSE

COMES NOW, JAMES OLSEN, Petitioner
herein, and responds to the Court's Notice of
Intent to Dismiss as follows.

Despite the Court's discussion and
analysis, Petitioner is still left with the
unsettling sense that boots trapping two
separate enhancements to a single
underlying act or conviction, especially

where the first enhancement creates the setting without which a second enhancement can even apply, is not permissible under the Double Jeopardy Clause.

It is true that the Legislature intended to allow a greater penalty for repeat DUI offenders by virtue of the enhancement provisions of I.C. 18-8004 et. seq. It is also true the Legislature allowed for a greater penalty for repeat felony offenders under I.C. 19-2514.

What may not be true is whether these may be, or if it was ever even contemplated that they be, used in the

aggregate in order to twice broaden a judges sentencing options, or more accurately a prosecutor's charging options, in a single proceeding.

For instance, despite I.C. 19-2514 already being in place to provide enhanced sentencing options for repeat offenders, the Legislature elected to create a section in I.C. 18-8005 to deal with repeat felony DUI offenders.

It seems likely this reflects a Legislative intent to distinguish repeat DUI offenders and to sentence them pursuant to DUI laws exclusive of career criminal laws.

Ordinarily, a DUI offense involves

negligent and sometimes reckless conduct that is criminalized not because there is an element of criminal intent, but because it is comparable to crimes that impose strict liability regardless of intent.

Conversely, I.C. 19-2514 contemplates those categories of crimes involving purposeful, aggressive conduct, or a calculated undertaking to produce harm, indicating a high degree of intent.

In other words, the legislature acknowledged the risk produced by DUI offenders, but then also acknowledged the manner in which the risk is produced,

and so created separate enhancement provisions crafted specifically for repeat DUI offenders.

It appears there is no authority directly on point addressing the precise issue Petitioner raises. Perhaps because it is peculiar to DUI cases only, where an offense that is normally a misdemeanor ends up part and parcel of an habitual criminal sentence. In State v. Turner, 147 Idaho 690 (Ct. App. 2009), cited by the Court, the underlying DUI was a Felony DUI by definition to begin with because of the actual harm or injuries produced. There

is no cumulative enhancement issue when the predicate offense is a felony by itself.

In contrast, when the underlying DUI is ordinarily a misdemeanor but is enhanced to a felony because of prior convictions, a judge is clearly given broader sentencing options due to the enhancement. Then, if an I.C. 19-2514 enhancement is later tethered to the proceedings because of the same prior convictions, the judge's sentencing options have now become cumulative.

This is the crux of Petitioner's Allegations — that where the underlying

offense itself would be a misdemeanor but for an imposed enhancement, that offense cannot now be used again as the underlying felony for further enhancement, especially where the same priors DUI's were used to both increase a misdemeanor to a felony, and then to support the habitual criminal enhancement attached to that felony.

WHEREFORE, Petitioner respectfully requests that his Petition be given further consideration.

Aug 28, 2013

Respectfully submitted,

Response Page 7

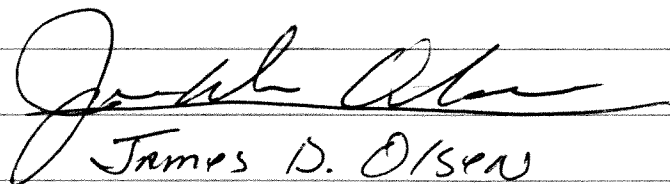
James D. Olson

CERTIFICATE OF SERVICE

I hereby certify that I served
a true and correct copy of the foregoing
RESPONSE by placing same in the
institutional mail this date addressed
as follows:

Kristina M. Schindele
Elmore County Prosecuting Attorney
190 South 4th East
Mountain Home, Id 83647

Dated this 29th day of August, 2013


James D. Olsen

FILED

2013 SEP -9 PM 2:14

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *MS*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

JAMES D. OLSEN,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2013-667

ORDER OF SUMMARY DISMISSAL

Currently before this Court is Petitioner's application for post-conviction relief filed July 22, 2013. The Petitioner claims a violation of the Fifth Amendment of the United States Constitution because the State used prior convictions to enhance his sentence in violation of the double jeopardy clause. Specifically, he states he was convicted under Idaho Code § 18-8004(6) and the punishment for this DUI was enhanced because he had previous convictions for driving under the influence, and then his sentence was enhanced again under Idaho Code § 19-2514 for being a persistent violator of the law, using the same convictions. He requests the indeterminate portion of his sentence be reduced from five years fixed and ten years indeterminate for a total unified sentence of fifteen years down to five years fixed and five years indeterminate for a total unified sentence of ten years.

BACKGROUND

The Petitioner pled guilty Count II, Driving Under the Influence, a Felony pursuant to Idaho Code § 18-8004 as enhanced by Part II of the Amended Information, and Part III of the Amended Information being a Persistent Violator under Idaho Code § 19-2514, on May 25, 2012. Counts I and III were dismissed. The Petitioner was sentenced on July 6, 2012 for Count

II as enhanced by Part II and III to five years determinate and ten years indeterminate for a total unified sentence of fifteen years.

The Court has taken judicial notice of the Amended Information filed on May 25, 2012 in the underlying criminal case. The Part II of the Information alleges the same prior convictions as Part III of the Information: Bonneville County CR-2001-3189-FE on March 7, 2002 and Twin Falls County CR-2004-1983 on October 29, 2007, both driving under the influence convictions.

The Petitioner did not file an Idaho Criminal Rule 35 motion for reduction of sentence or an appeal with the Idaho Supreme Court.

The Petitioner, *pro se*, filed a sworn Petition and Affidavit for Post-Conviction Relief on July 22, 2013 which was timely pursuant to Idaho Code § 19-4902.

The Court issued a Notice of Intent to Dismiss filed August 16, 2013. The Petitioner filed a Response on September 3, 2013. The Court has reviewed and considered the Petitioner's Response.

LEGAL STANDARDS

The Uniform Post-Conviction Procedure Act, I.C. §§19-4901 through 19-4911, allows for individuals convicted and/or sentenced of a crime to petition the Court for relief. The statute allows relief in the following situations: the sentence is in violation of the constitution; the Court lacks jurisdiction; the sentence exceeds the maximum provided by law; there is evidence, not previously presented, requiring vacation of the sentence in the interest of justice; that the sentence has expired; the petitioner is innocent; and the sentence is subject to collateral attack. After the reviewing an application for post-conviction relief, the Court can, if satisfied that the applicant is not entitled to relief, and that no purpose would be served by any further proceedings, indicate to the parties its intention to dismiss the application, and its reasons for doing so. I.C. §19-4906(b). The applicant shall have an opportunity to respond to the Court's notice of intent to dismiss. Summary disposition under I.C. §19-4906 is the "procedural equivalent of a summary judgment motion under I.R.C.P. 56." *Pratt v. State*, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000); *see also, Martinez v. State*, 125 Idaho 844, 846, 875 P.2d 941, 943 (Ct.App. 1994). In "determining whether a motion for summary disposition is properly granted, the Court reviews the facts in a light most favorable to the petitioner and determines whether the facts would entitle petitioner to relief if accepted as true." *Pratt*, 134 Idaho at 583, 6 P.3d at 833.

“[A]n applicant’s conclusory allegations, unsubstantiated by any admissible evidence, need not be accepted as true.” *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994). If the allegations fail to frame a genuine issue of material fact, or fail to establish all the necessary *prima facie* elements of a claim for relief, the court “may indicate to the parties its intention to dismiss the application and the reasons for so doing.” I.C. § 19-4906(b); I.C.R. 57(c); *Roman, supra*; *Parrott v. State*, 117 Idaho 272, 276, 274, 787 P.2d 258, 260, 262 (1990). However, if the application raises a material issue of fact, the district court must conduct an evidentiary hearing and make specific findings. I.C. § 19-4907(a); *Martinez*, 125 Idaho at 846, 875 P.2d at 943.

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Idaho Code § 18-8006 provides the maximum sentence for Count II as enhanced in Part II of the Amended Information for at least one prior felony Idaho Code § 18-8004 within the past fifteen years was ten years indeterminate, up to a \$5,000.00 fine, and up to five years of absolute driver’s license suspension. For this offense, there was a minimum of thirty days in jail and a minimum of one year absolute driver’s license suspension.

The Defendant also pled guilty to being a Persistent Violator under Idaho Code § 19-2514 as alleged in Part III of the Amended Information. Pursuant to Idaho Code § 19-2514, “...on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.” Therefore, there was a minimum unified sentence of five years required. *State v. Toyne*, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

DISCUSSION

Petitioner claims in his *pro se* Petition that using the same two prior convictions to enhance his charge and sentence to a felony under Idaho Code § 18-8004(6), and then using those two prior felonies plus this conviction to enhance his sentence again under Idaho Code § 19-2514 for being a persistent violator of the law was a violation of the Double Jeopardy Clause.

The Fifth Amendment's Double Jeopardy Clause applies to the states through the Fourteenth Amendment. *Illinois v. Vitale*, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980); *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). The guarantee against double jeopardy encompasses three distinct constitutional protections. "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishment for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969); *Brown v. Ohio*, 432 U.S. 161, 165, 97 S.Ct. 2221, 2225, 53 L.Ed.2d 187 (1977). Fourteenth Amendment. *Illinois v. Vitale*, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980); *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

State v. Galaviz, 104 Idaho 328, 329, 658 P.2d 999, 1000 (Ct. App. 1983).

The Idaho Court of Appeals made clear in *State v. Lopez* that an enhancement is not an offense and does not create a new crime. *State v. Lopez*, 107 Idaho 826, 693 P.2d 472 (Ct. App. 1984). An enhancement, instead, provides for the imposition of greater punishment for the underlying conviction and a separate sentence is not to be imposed for the enhancement. *Id.* Where a person is convicted of a felony and is also adjudged to be a persistent violator of the law, there is only one conviction and only one sentence can be imposed. *State v. Martinez*, 107 Idaho 928, 693 P.2d 1130 (Ct. App. 1985), *cert denied*, 116 Idaho 466, 776 P.2d 828 (1985). However, as a persistent violator, the sentence can be greater than what the statutes otherwise would have permitted for the particular felony and may include imprisonment for life. *Id.*

The Petitioner asserts in his Petition and his Response that, because his prior sentences were for driving under the influence, the enhancement statutes result in multiple punishment for the same offense. He argues this is unfair but neither his Petition nor his Response raises a genuine issue of material fact. The facts, taken as proposed by the Petitioner, still lead to the same conclusions of law and may be appropriately decided by summary judgment. The Petitioner argues that the legislature would have wanted the Court to sentence a defendant only under the driving under the influence laws and his argument is that a driving under the influence offender should never be subject to the Persistent Violator enhancement as long as he or she continues to commit the same crime of felony driving under the influence because the sentence should only be enhanced once and never subject to the Persistent Violator enhancement as well.

However, each of this Defendant's prior offenses were felonies and each of these offenses were committed on different days and in different counties, although they were all

driving under the influence convictions. His first felony was in 2002 in Bonneville County, the second in 2007 in Twin Falls County, and the third was in 2012 in Elmore County. While each crime was the same charge, the criminal offenses here are very distinct with each separated by five years. Persistent violator status is not a separate crime, it is simply a determination that broadens the judge's sentencing options. *State v. Smith*, 116 Idaho 553, 777 P.2d 1226 (Ct. App. 1989). The Idaho Court of Appeals considered what was a single count in aggravated driving under the influence case in *State v. Turney*, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009). The Court determined that the driving was not the single act, but the act was injuring separate victims even in the single act of driving under the influence. The Court of Appeals upheld separate charges for each victim and then upheld the persistent violator enhancement to the sentence for each separate victim. Clearly, if the charging and sentencing the *Turney* case for separate acts from a single act of driving did not violate the Double Jeopardy clause, then sentencing as a persistent violator for three separate felonies committed on three separate days five years apart was also not a violation of the Double Jeopardy clause. The Petitioner argues in response that his case differs from the facts in *Turney* because *Turney* was convicted of separate counts of aggravated battery, each a felony because of the injury. However, the law of the case still applies although the Defendant's convictions were felonies because he continued to commit the same crime and the legislature enacted enhanced punishments for committing the same crime over and over, as well as an additional enhancement for being a habitual felon.

This court is not bound by the Petitioner's legal conclusions in his petition, affidavit, or response as to the legal effect of an enhancement. I.C. § 18-8004(9) clearly made the 2012 offense a felony, his third felony conviction. The Idaho legislature intended that driving under the influence, when committed repeatedly or under aggravated circumstances, should receive greater penalties than a first-time charge and this does not violate double jeopardy. Then, I.C. § 19-2514 specifically required the minimum sentence of five years imprisonment and allows an extended sentence for up to life for this third felony offense. Again, the Idaho legislature clearly intended that felonies when committed repeatedly should receive greater penalties than those available for the first two and this does not violate double jeopardy. It is well established in our case law that enhancement is part of a single sentence and this does not violate double jeopardy.

Therefore, taking as true each allegation in the Petition and affidavit, the Petition has no legal merit and is frivolous.

CONCLUSION

On the basis of the application, and the present record before it, the Court is satisfied that Petitioner is not entitled to post-conviction relief and that no purpose would be served by any further proceedings. The Petition is hereby dismissed with prejudice.

IS IT SO ORDERED.

Dated this 4th day of September, 2013.



Lynn Norton
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of September, 2013, I mailed (served) a true and correct copy of the within instrument to:

Elmore County Prosecutor's Office
INTER DEPT MAIL

James Olsen
IDOC #17304
Idaho State Correctional Institution
13C60
P.O. Box 14
Boise, ID 83707
U.S. MAIL

BARBARA STEELE
Clerk of the District Court

By 
Deputy Court Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FILED

2013 SEP -9 PM 2: 14

JAMES D. OLSEN,

Case No. CV-2013-667

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Petitioner,

vs.


JUDGMENT

STATE OF IDAHO,

Respondent.

Based upon the Order of Summary Dismissal entered by the Court on September 4, 2013, this court enters judgment on behalf of the Respondent and dismisses the Petition with prejudice.

Dated this 6th day of September, 2013.

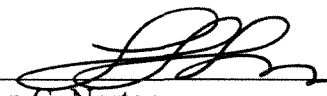


Lynn G. Norton
District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated this 6th day of September, 2013.



Lynn G. Norton
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of September, 2013, I mailed (served) a true and correct copy of the within instrument to:

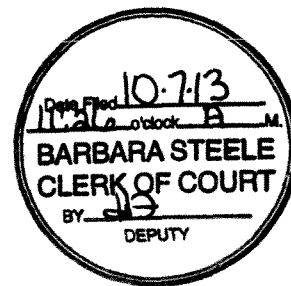
Elmore County Prosecutor's Office
INTER DEPT MAIL

James Olsen
IDOC #17304
Idaho State Correctional Institution
13C60
P.O. Box 14
Boise, ID 83707
U.S. MAIL

BARBARA STEELE
Clerk of the District Court

By: OK Just
Deputy Court Clerk

Inmate Name James Olson
IDOC No. 17304
Address FSCI PO Box 14
Boise, Id 83707



Appellant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ELMORE COUNTY

James D. Olson,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

CASE NO. CV 2013-667

S.C. DOCKET NO. _____

NOTICE OF APPEAL
Post Conviction

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, STATE OF IDAHO, PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the entered in the above-entitled action on the 9-6-13 (DATE), the Honorable Norton (NAME OF JUDGE) presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(1-10), I.A.R.

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in dismissing the appellant's Petition for Post Conviction Relief?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

~~5. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:~~

(a) The Status Hearing held on N/A (DATE OF HEARING); and

(b) The Evidentiary Hearing held on N/A (DATE OF HEARING).

6. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

(a) Any briefs or memorandums, filed or lodged, by the state, the appellate, or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition;

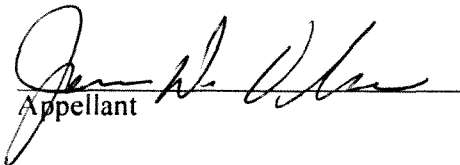
(b) Any motions or responses, including all attachments, affidavits or copies of transcripts, filed or lodged by the state, appellant or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition; and

(c) (ANY ITEMS FROM THE UNDERLYING CRIMINAL CASE OF WHICH THE COURT TAKES JUDICIAL NOTICE NOTE: UNLESS SPECIFICALLY ASKED FOR, THE PORTIONS OF THE UNDERLYING RECORD WHICH THE DISTRICT COURT TOOK JUDICIAL NOTICE OF WON'T BE INCLUDED IN THE RECORD.)

7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with N/A (NAME OF COUNTY) County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e);
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 1 day of oct, 2013

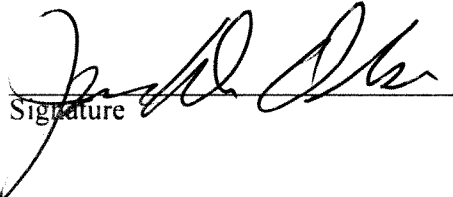

Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3 day of Oct, 2013 I mailed a true and correct copy of the attached NOTICE OF APPEAL via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

**Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010**

Elmore County Prosecuting Attorney
190 South 4th East
Mountain Home, ID 83647


Signature

FILED

2013 OCT -7 AM 11:26

BARBARA STEELE
CLERK OF THE COURT
DEPUTY



James D. Olson
Full Name of Party Filing This Document
ISCI P.O. Box 14
Mailing Address (Street or Post Office Box)
Buise Id 83707
City, State and Zip Code

Telephone Number

IN THE DISTRICT COURT OF THE Fourth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Elmore

James D. Olson
Plaintiff, Appellant

vs.
State of Idaho
Defendant.

Case No.: CV 2013-667

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
County of Ada) ss.

☒ Plaintiff ☐ Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Appeal - Post Conviction
believe I'm entitled to get what I am asking for.

2. ☒ I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. ☐ I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: James Olsen Other name(s) I have used: _____

Address: ISEI Borsu Id

How long at that address? 10 mo. Phone: —

Date and place of birth: Inok Falls Id

DEPENDENTS:

I am ☒ single ☐ married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: _____

INCOME:

Amount of my income: \$ 0 per [] week [] month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ — per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
-----------------	------	-------	----------------------	-------	--------

NONE

List all other property owned by you and state its value.

Description (provide description for each item)

Value

Cash

APPX \$ 100.00

Notes and Receivables

Vehicles:

Bank/Credit Union/Savings/Checking Accounts

Stocks/Bonds/Investments/Certificates of Deposit

Trust Funds

Retirement Accounts/IRAs/401(k)s

Cash Value Insurance

Motorcycles/Boats/RVs/Snowmobiles:

Furniture/Appliances

Jewelry/Antiques/Collectibles

Description (provide description for each item)

Value

TVs/Stereos/Computers/Electronics

Tools/Equipment

Sporting Goods/Guns

Horses/Livestock/Tack

Other (describe)

EXPENSES: List all of your monthly expenses.

Expense

**Average
Monthly Payment**

Rent/House Payment

Vehicle Payment(s)

Credit Cards: (list each account number)

Capital One
Bank of America

appx \$1000 - Total
1500 -

Loans: (name of lender and reason for loan)

Electricity/Natural Gas

Water/Sewer/Trash

Phone

Groceries

Clothing

Auto Fuel

Auto Maintenance

Cosmetics/Haircuts/Salons

Entertainment/Books/Magazines

Home Insurance

Expense

**Average
Monthly Payment**

Auto Insurance

Life Insurance

Medical Insurance

Medical Expense

Other

MISCELLANEOUS:

How much can you borrow? \$ none From whom? _____

When did you file your last income tax return? 2011 Amount of refund: \$ -0-

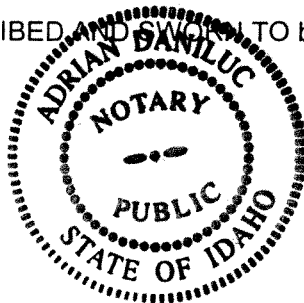
PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known
<u>Beverly Olsen</u>	<u>780 E. IVA</u>	<u>IF 1606 525-8288</u>	<u>45</u>
<u>Robert Olsen</u>	<u>309 E. 19th</u>	<u>524-1360</u>	<u>60</u>

Signature

Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 2013.



Notary Public for Idaho

Residing at 12440

My Commission expires 07-16-19

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 06/05/2013 =

Doc No: 17304 Name: OLSEN, JAMES DEE
Account: CHK Status: ACTIVE

ISCI/UNT13 PRES FACIL
TIER-C CELL-60

Transaction Dates: 05/01/2012-06/05/2013

Beginning Balance 0.00	Total Charges 832.85	Total Payments 1157.53	Current Balance 324.68
------------------------------	----------------------------	------------------------------	------------------------------

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
11/01/2012	HQ0604983-001	950-REICNARCERATED	IBSUSPCHK	0.00	0.00
11/01/2012	HQ0604986-004	013-RCPT RDU	ELMORE	149.55	149.55
11/05/2012	II0605421-175	099-COMM SPL		52.47DB	97.08
11/05/2012	II0605421-176	099-COMM SPL		4.82DB	92.26
11/07/2012	II0606019-003	071-MED CO-PAY	549023	8.00DB	84.26
11/12/2012	II0606372-191	099-COMM SPL		3.15DB	81.11
11/13/2012	II0606534-007	100-CR INM CMM		3.15	84.26
11/14/2012	HQ0606564-005	011-RCPT MO/CC	MAIL	400.00	484.26
11/18/2012	II0607059-180	099-COMM SPL		4.16DB	480.10
11/26/2012	II0607658-152	099-COMM SPL		324.16DB	155.94
11/26/2012	II0607658-153	099-COMM SPL		19.56DB	136.38
12/03/2012	II0608455-206	099-COMM SPL		15.72DB	120.66
12/03/2012	II0608455-207	099-COMM SPL		4.87DB	115.79
12/10/2012	II0609437-178	099-COMM SPL		21.74DB	94.05
12/17/2012	II0610283-179	099-COMM SPL		3.71DB	90.34
12/23/2012	II0611017-202	099-COMM SPL		11.66DB	78.68
12/23/2012	II0611017-203	099-COMM SPL		18.23DB	60.45
12/30/2012	II0611657-196	099-COMM SPL		7.31DB	53.14
01/07/2013	II0612443-216	099-COMM SPL		11.65DB	41.49
01/08/2013	HQ0612593-006	011-RCPT MO/CC	MAIL	400.00	441.49
01/14/2013	II0613715-200	099-COMM SPL	613362	21.04DB	420.45
01/21/2013	II0614020-170	099-COMM SPL		7.90DB	412.55
01/22/2013	II0614243-012	100-CR INM CMM		3.98	416.53
01/28/2013	II0614795-180	099-COMM SPL		8.32DB	408.21
01/28/2013	II0614795-181	099-COMM SPL		3.98DB	404.23
02/04/2013	II0615468-195	099-COMM SPL		11.82DB	392.41
02/11/2013	II0616507-228	099-COMM SPL		16.49DB	375.92
02/12/2013	II0616738-009	071-MED CO-PAY	558863	8.00DB	367.92
02/18/2013	II0617194-207	099-COMM SPL		7.00DB	360.92
02/25/2013	II0617914-190	099-COMM SPL		17.76DB	343.16
02/25/2013	II0617914-191	099-COMM SPL		11.32DB	331.84
03/04/2013	HQ0618667-025	030- 3/2013 CI INC	CI INCOME	34.99	366.83
03/07/2013	II0619292-008	071-MED CO-PAY	559131	8.00DB	358.83
03/11/2013	II0619605-230	099-COMM SPL		15.53DB	343.30
03/18/2013	II0620328-214	099-COMM SPL		5.41DB	337.89
03/18/2013	II0620328-215	099-COMM SPL		35.83DB	302.06
04/01/2013	II0621853-215	099-COMM SPL		19.10DB	282.96
04/02/2013	HQ0622017-025	030- 4/2013 CI INC	CI INCOME	53.49	336.45
04/12/2013	II0623398-108	099-COMM SPL		16.70DB	319.75

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 06/05/2013 =

Doc No: 17304 Name: OLSEN, JAMES DEE
Account: CHK Status: ACTIVE

ISCI/UNT13 PRES FACIL
TIER-C CELL-60

Transaction Dates: 05/01/2012-06/05/2013

	Beginning Balance 0.00	Total Charges 832.85	Total Payments 1157.53	Current Balance 324.68	
===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
04/15/2013	II0623484-217	099-COMM SPL		26.21DB	293.54
04/22/2013	II0624217-227	099-COMM SPL		8.53DB	285.01
05/02/2013	HQ0625416-028	030- 5/2013 CI INC CI INCOME		55.91	340.92
05/06/2013	II0625880-221	099-COMM SPL		15.74DB	325.18
05/10/2013	II0626692-013	071-MED CO-PAY	576764	8.00DB	317.18
05/13/2013	II0626755-219	099-COMM SPL		18.31DB	298.87
05/20/2013	II0627494-235	099-COMM SPL		12.19DB	286.68
06/03/2013	II0628763-197	099-COMM SPL		18.46DB	268.22
06/04/2013	HQ0628945-026	030- 6/2013 CI INC CI INCOME		56.46	324.68

STATE OF IDAHO

Idaho Department of Correction

I hereby certify that the foregoing is a full, true and
correct copy of an instrument as the same now remains
on file and of record in my office.

WITNESS my hand hereto affixed this 5TH

day of June A.D., 2013

by L. Anderson

FILED

2013 OCT 22 AM 8:11

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Full Name of Party Submitting This Document

Mailing Address (Street or Post Office Box)

City, State and Zip Code

Telephone Number

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

James Owen

Plaintiff,

vs.

State of Idaho

Defendant.

Case No.: CV 2013-667

ORDER RE: PARTIAL PAYMENT OF
COURT FEES (PRISONER)

Having reviewed the ☒ Plaintiff's [] Defendant's Motion and Affidavit for Partial Payment of Court Fees. *No filing fee is required in postconviction cases but*
THIS COURT FINDS AND ORDERS: *the Petitioner qualifies as indigent for payment of costs on appeal. The motion is GRANTED.*
[] The average monthly deposits in the prisoner's inmate account total \$_____, the average monthly balance in the prisoner's inmate account during the last six months has been \$_____; 20% of the greater of these amounts is \$_____ and must be paid as a partial initial fee at the time of filing. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the remainder of the court filing fees in the amount of \$_____ are paid in full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid
or [] The prisoner has no assets and need not pay any fee at this time. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the court filing fees in the amount of \$_____ are paid in

ORDER RE: PARTIAL PAYMENT OF COURT FEES (PRISONER)
CAO 1-10D 05/20/2005

PAGE 1

full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid.

or ☐ THIS COURT DENIES the motion because

☐ the prisoner did not comply with all the requirements of Idaho Code §31-3220A, or

☐ the Court finds the prisoner has the ability to pay the full filing fee at this time.

Date: October 21, 2013

[Signature]
Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that a copy was served:

To Prisoner:

Name: James Olsen, #17304

Address: ISCI, P.O. Box 14

City, State, Zip: Boise, ID 83707

☐ Hand-delivery

☒ Mailing

☐ Fax to (number) _____

To ☐ counsel for the county sheriff ☐ the department of correction or ☐ the private correctional facility:

Name: _____

Address: _____

City, State, Zip: _____

☐ Hand-delivery

☐ Mailing

☐ Fax to (number) _____

Date: _____

Deputy Clerk

See attached.

CLERK'S CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document was sent to the following:

James Olsen, IDOC #17304
ISCI
P.O. Box 14
Boise, ID 83707
U.S. MAIL

Lawrence G. Wasden
Attorney General
P.O. Box 83720
Boise, ID 83720-0010
U.S. MAIL

Clerks Office
Idaho Supreme Court
Court of Appeals
P.O. Box 83720
Boise, ID 83720-0101
U.S. MAIL

Dated this 22nd day of October 2013.

BARBARA STEELE
Clerk of the District Court

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Supreme Court
	)	Case No. 41499
JAMES OLSEN,	)	CLERK'S CERTIFICATE
)	
Defendant/Appellant.)	
_____)	

I, Barbara Steele, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete record of the pleadings and documents requested by Appellate Rule 28.

I further certify that all exhibits, offered or admitted in the above entitled cause, see Clerk's Certificate of Exhibits, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record.

I further certify that the following will be submitted as exhibits to the Record on Appeal:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of November, 2013.

BARBARA STEELE
Clerk of the District Court

By JS/Sealed
Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

THE STATE OF IDAHO,)	
)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Supreme Court
	)	Case No. 41499
JAMES OLSEN,)	
	)	CLERK'S CERTIFICATE OF
	)	EXHIBITS
)	
Defendant/Appellant.)	
_____)	

I, Barbara Steele, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, do hereby certify:

That the following is a list of exhibits which were offered or admitted into evidence during this case:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of November, 2013.

BARBARA STEELE
Clerk of the District Court

By B Steele
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO,)	
)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Supreme Court
	)	Case No. 41499
JAMES D. OLSEN,)	
	)	CERTIFICATE OF SERVICE
)	
Defendant/Appellant.)	
_____)	

I, Barbara Steele, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the REPORTER'S TRANSCRIPT and CLERK'S RECORD to each of the attorneys of record in this cause as follows:

Lawrence G. Wasden
ATTORNEY GENERAL
Statehouse Mail
P.O. Box 83720
Boise, ID 83720-0010

James Olsen, IDOC #17304
Pro-Se
Idaho State Correction Institution
P.O. Box 14
Boise, ID 83707

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of November, 2013.

BARBARA STEELE
Clerk of the District Court

By B Steele
Deputy Clerk

CERTIFICATE OF SERVICE